

REMARKS/ARGUMENTS

Claims 20 and 22-42 remain in the application for further prosecution. Claims 1-19 and 21 have been cancelled in prior amendments.

§ 103 Rejections

Claims 20 and 22-42 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2005/0192090 A1 to Muir *et al.* (“Muir”) , U.S. Patent No. 5,673,128 to Ohta *et al.* (“Ohta”), and U.S. Patent Application No. 6,638,165 B2 to Uchiyama *et al.* to (“Uchiyama”). Applicant respectfully requests withdrawal of this rejection for the reasons discussed below.

Muir’s “Inherent” Diffusion Layer Lacks The Claimed “Openings” and “Discrete Viewing Areas”

In the latest Office Action, the Examiner has explained that Muir must inherently include the claimed diffusion layer in order to operate as an LCD device. The Examiner has cited to other references, like Ohta, to assist in the explanation of Muir’s teaching on its LCD device.

The problem with the rejection is that it fails to take into account Muir’s actual teaching and, in particular, FIG. 8. Muir is very specific about the layers of its LCD 50. It provides details about each layer, including the openings 64 in the housing and the zones 78 in the shutter 76. After suggesting that a diffusion layer must be inherently present in Muir’s backlighting panel 84 (Office Action, p. 5), the Examiner then makes an additional “leap” by suggesting that Muir’s inherent diffusion layer on the backlighting panel 84 also must inherently (or obviously) have the claimed openings or discrete viewing areas in it. Office Action, p. 7. In fact, even

though Muir's backlighting panel 84 is illustrated as solid unitary piece, the Examiner further suggests that the skilled artisan would have obviously placed openings in that backlighting panel 84 as well. Of course, contrary to the Examiner's suggestion, Muir chose to include no openings in its backlighting panel 84.

The Applicants respectfully suggest that the present rejection is improper. Using the principle of inherency to find a diffusion layer in Muir is one thing. But, arguing that the inherent diffusion layer also has the claimed "openings" is quite another thing and, more importantly, is in direct contradiction to the fundamental examination rules prescribed by the MPEP. The impropriety of the rejection is further highlighted in this case where the Examiner's stated motivation on page 7 of the Office Action for adding the openings ("clearing an obstructed view when different displays are placed in front of one another") is taken directly out of the Applicant's own disclosure. See paragraphs 6-7 of the present application (openings to "ensure the visibility of the designs variably displayed on the variable display means"). These facts strongly suggest the current rejection is based on a hindsight reconstruction of the claims in which the Applicant's own specification has been used as the blueprint for the rejection. See MPEP § 2145(X)(A), quoting *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

Accordingly, all of the claims, which include the "openings" or the "discrete viewing areas" within the specified layers of the "front display device," are patentable over the proposed combination of Muir, Ohta, and Uchiyana.

The Teachings of Ohta and Muir Are at Odds With the Claimed Invention

The Examiner relies on Ohta for a teaching of a diffusion layer. In doing so, the Office Action states the following about Ohta:

The diffusion sheet is taught to uniformly diffuse a light emitted from the

backlight device on the whole face of the LCD panel and a reflecting plate holder is provided ...

Office Action, p. 8. If Ohta teaches to diffuse the light from the backlight across “the whole face of the LCD panel” and Muir’s FIG. 8 illustrates a backlighting panel 84 that is located across the whole face of the LCD panel, why would the skilled artisan read Muir and Ohta and result in the invention of claim 20 in which the light guiding plate and the diffusion panel both have openings such that each of these layers does not extend over “the whole face of the LCD panel?” Again, that fact further suggests that the current rejection is based on a hindsight reconstruction of the claims.

In summary, a *prima facie* case of obviousness has not been established because the Examiner has improperly invoked the principle of inherency to help find the claimed “diffusion layer” and then used inherency (or obviousness) to find the claimed “openings” or “discrete viewing areas” in the inherent diffusion layer (as well as other layers), even though none of the cited prior art teaches these claim elements. And, when doing so, the Examiner has ignored the teachings of the prior art reference that would teach against the inclusion of the “openings” or “discrete viewing areas.” Consequently, the Applicants respectfully request that the current rejection be removed and a Notice of Allowance be issued.

Conclusion

It is the Applicant's belief that all of the claims are now in condition for allowance and action towards that effect is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at the number indicated.

It is believed that no fees are due; however, should any fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Nixon Peabody LLP Deposit Account No. 50-4181, Order No. 247079-000772USPT.

Respectfully submitted,

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